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Chairman: Mr. Becker (Vice-Chairman) ..... (Israel)

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In the absence of Mr. Baja (Philippines), Mr. Becker (Israel), Vice-Chairman, took the Chair.

The meeting was called to order at 10 a.m.

Agenda item 150: Convention on jurisdictional immunities of States and their property (*continued*) (A/58/22)

1. **Ms. Nguyen Thi Van Anh** (Viet Nam) said that, as a result of compromise following a long negotiation process, the draft articles contained in the report of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property (A/58/22) took into account the views of different groups of States. The early adoption of the articles in the form of an international convention would make a further contribution to the process of codification and progressive development of international law. Her delegation therefore supported the proposal to convene the Ad Hoc Committee in 2004 with a clear mandate to finalize the preamble and final clauses for a future convention.

2. **Mr. Hoffmann** (South Africa) said that the finalization of the draft articles marked the culmination of some 25 years of work by the International Law Commission and over 10 years of work by the Sixth Committee. Notwithstanding the difficulties in accommodating different legal and political systems, consensus had been reached. The need for uniform international rules on the jurisdictional immunities of States and their property was underscored by the increased participation of States and their agencies in international commercial ventures and the impact of globalization, which emphasized the disparities between developed and developing countries.

3. Although South African legislation would have to be amended to bring it into line with the draft articles, his Government was prepared to do so in the conviction that the draft articles presented a workable solution. His delegation agreed that the draft articles should be embodied in a convention, rather than in a General Assembly resolution or a model law. Not all his Government's positions were reflected in the draft articles but compromise had been required in order to finalize them. Common positions would have been easier to reach if the intent had been for the draft articles to be adopted as "soft law". To turn the draft articles into a draft convention, it might be necessary to reconvene the Ad Hoc Committee for a final session in 2004, on the clear understanding that it was not to reopen debate on substantive issues.

4. **Mr. Ilnytskyi** (Ukraine) said that uniform rules in the sphere of jurisdictional immunities of States and their property were important in providing stability and predictability in transactions between States and private parties, particularly in view of the growing direct participation of States in international trade.

5. The Ad Hoc Committee had made substantial progress and all that remained was to give the draft articles a generally acceptable practical form. His country strongly favoured adopting the draft articles in the form of a convention, in order to ensure their legally binding character and direct application by national courts, and considered the idea both feasible and realistic. There was enough evidence of custom and practice to make such codification possible, and there were enough conflicting unilateral solutions to demonstrate its necessity. The adoption of a convention would limit the proliferation of differing national regulations that might damage intergovernmental relations and international trade. Although the adoption of a model law would have certain advantages, such an approach would have insufficient legal weight and would give the impression that the international community was currently unable or unwilling to codify a matter that properly belonged in the sphere of international law. Ukraine looked forward to the work of the Ad Hoc Committee in 2004 on a preamble and final clauses of a draft convention for adoption at the following session of the General Assembly.

6. **Mr. Lavalle-Valdés** (Guatemala) said that his delegation shared the views expressed by Peru on behalf of the Rio Group. The success of the Ad Hoc Committee in completing the draft articles on jurisdictional immunities of States and their property was especially welcome since the General Assembly, in its resolution 57/16, had rather dramatically asked it to make "a final attempt" to complete its task, implying that if it were unsuccessful the effort would have to be abandoned.

7. From the standpoint of a small country, one of many, that did not have an abundance of legislation or precedent on the subject of State immunity and would be obliged to fall back on a diffuse and kaleidoscopic body of international customary law if a case should arise in that regard, his delegation would welcome an

international instrument that would regulate the matter with sufficient clarity and scope.

8. The draft articles formulated by the Ad Hoc Committee formed the best available basis for such an instrument. Admittedly, they were not perfect and did not satisfy all States, partly because some States already had their own legislation on the subject or were parties to the European Convention on State Immunity. However, those States surely constituted a small minority of the States Members of the United Nations. Nor could the invitation issued in article 37 of the European Convention to non-European States to become parties to the Convention be considered a realistic way of universalizing the regime.

9. It should be borne in mind, moreover, that none of the international conferences held to adopt a convention based on draft articles elaborated by the International Law Commission had adopted them without changes. Such a conference would provide the opportunity for States to push for amendments to address their individual concerns. Lastly, parties to multilateral conventions could protect their interests by formulating reservations.

10. **Mr. Rao** (India) said that the draft articles represented a fair and delicate balance among the concerns expressed by Member States. Although they did not satisfy all delegations, in view of the considerable efforts invested in reaching the compromise the consensus should be preserved. His delegation would support the adoption of the draft articles in the form of a convention. Only a legally binding instrument would provide uniformity and certainty as to the applicable rules and clarify the scope and nature of the immunities of States and their property in legal proceedings. Such an instrument would make a significant contribution to the development of international trade law, to the benefit of developing countries. Since further work would be required on the preamble and final clauses for a convention, his delegation supported the proposal that the Ad Hoc Committee should be reconvened, subject to a time limit.

11. **Mr. Rodiles** (Mexico) said that he had noted widespread support for the adoption of the draft articles in the form of a convention. Mexico had consistently stressed the need for a binding legal instrument on jurisdictional immunities of States to fill the legislative gap in that area in many Member States and to assist their courts. His delegation therefore supported the establishment of an ad hoc committee with a mandate to elaborate the preamble and final clauses of such a convention, including a clause concerning the relationship between the articles and other international agreements on State immunity.

12. With regard to the "understandings" to be found in annex II to the report of the Ad Hoc Committee (A/58/22), their role was to serve as an interpretative guide for the benefit of the national authorities implementing the articles and the courts interpreting them. Once agreed upon, they should find a place in the *travaux préparatoires* of the convention. On the subject of reservations, in principle his delegation favoured allowing their formulation. Since the rules of the convention would be applied primarily by national authorities, States should be granted a certain latitude. Lastly, there should be a clause on the peaceful solution of disputes, as it would certainly be needed.

13. **Mr. Hmoud** (Jordan) took note of the recommendation in document A/58/22 that the General Assembly take a decision on the form of the draft articles. In view of the complexities involved in negotiating the outstanding issues in the past, and the balance in the agreed text of the relevant articles, his delegation supported the adoption of the draft articles by the General Assembly. It nonetheless considered the better approach to be the adoption of the articles in the form of a declaration.

14. Compromises on contentious issues had led to ambiguities in the text of certain articles. He drew attention to article 19, paragraph (c), regarding measures of constraint which might be taken against a property that had a connection with the entity against which the proceeding was directed. Unfortunately, the understandings set out in annex II to document A/58/22 did not provide the necessary clarification of the term "has a connection" or the term "entity". Furthermore, the word "entity", as defined in the understanding on article 19, included the State, yet at the same time included other entities which enjoyed independent legal personality. In that regard, the understanding did not provide qualifications for the legal independence of such entities.

15. The term was also inconsistent with the definition of "State" in article 2, which would add to the confusion of national jurisdictions when they decided to implement draft article 19, paragraph (c). The two

terms were meant to be different, yet such a difference was not elaborated upon in the understanding, and might only be understood by those who had taken part in the "informal informals". For that reason, his delegation considered that the understandings in annex II did not qualify as proper *travaux préparatoire* for the purposes of an internationally binding instrument. It would be better to adopt the draft articles in the form of a declaration and defer the issue of a convention until such time as State practice and international jurists could provide the necessary clarifications.

16. His delegation did not object to the compromise on the text of article 11, paragraph 2 (d), concerning dismissal or termination of employment. That should not be interpreted as acquiescence to the content of the provision. The understanding reached on that paragraph, as reflected in annex II, should not have the effect of allowing the authorities of one State to make judicial determinations regarding the political decisions of another State, including on matters of the latter's national security. When heads of State or Government or ministers for foreign affairs invoked national security, their determination should not be subject to judicial review in another State, especially in employment proceedings. It was for that reason that his delegation was not in favour of including that part of annex II in the understandings. His delegation would assert its position concerning article 11, paragraph 2 (d), and in relation to the relevant part of annex II, in the event that the draft articles were adopted in the future.

17. **Mr. Medrek** (Morocco) said that, during its session in February 2003, the Ad Hoc Committee had succeeded in reaching consensus on a number of substantive points that had been perennial subjects of debate, thereby paving the way for the adoption of the draft articles. His delegation would like to see the draft articles embodied in an acceptable international instrument. In view of the recent increase in lawsuits against States and their property, it was high time to adopt a uniform international regime that would provide stability in relations among States and confidence and security in the area of jurisdictional immunities. Morocco supported the conclusion of a convention that would put an end to the proliferation of diverse national laws on the subject and promote international trade through legal certainty and homogeneity. It was in favour of setting up an ad hoc committee to finalize the preamble and final clauses of such a convention and was ready to participate actively in that task.

18. **Mr. Dhakal** (Nepal) said that a legally binding instrument that would overcome the lack of harmony in the existing norms governing State practice and customary international law in the area of jurisdictional immunities of States and their property was long overdue. It was a significant achievement that the Ad Hoc Committee had finally resolved all outstanding substantive issues with regard to the draft articles recommended by the International Law Commission in 1991. His delegation urged that the Ad Hoc Committee should continue its work on the format of the instrument, including a preamble and final clauses, in a spirit of compromise and flexibility.

Agenda item 154: International Criminal Court (*continued*) (A/C.6/58/L.14)

19. **The Chairman** invited the Committee to take action on draft resolution A/C.6/58/L.14, as orally revised at a previous meeting.

20. **Mr. Rostow** (United States of America) said that his Government's opposition to the Rome Statute of the International Criminal Court remained unchanged. Nothing in the Court's structure suggested that it would avoid political trials; moreover, it was an institution of unchecked power with serious problems in the areas of jurisdiction and due process, including with respect to multiple jeopardy. The Court did not require consent or comity, which were essential operating principles of international law, in order to exercise jurisdiction. The Rome Statute did not provide sufficient opportunity for Security Council oversight and suggested that the Assembly of States Parties was competent to define aggression, a matter left to the Council by the Charter of the United Nations.

21. However, the United States had a record second to none in holding its officials accountable for war crimes, genocide and crimes against humanity; supporting properly constituted international war crimes tribunals; and training members of its armed forces in their obligations under international law. Properly understood, his Government's lack of support for the Court reflected its commitment, not its opposition, to the rule of law.

22. He reiterated his delegation's support for excluding from the Court's jurisdiction personnel from States which were not parties to the Rome Statute in

respect of acts or omissions connected with their participation in United Nations missions since standard bilateral status-of-forces agreements provided for the exclusive jurisdiction of the sending State over its military personnel.

23. He did not agree with those who argued that the language and negotiating history of article 16 of the Rome Statute, under which the Security Council had addressed that issue, showed that it had been intended to address only specific, ongoing cases; Council resolutions 1422 (2002) and 1487 (2003) represented compromises between the views of those who supported the Court and those who did not.

24. The United States did not seek to undermine the Court and respected the right of States to become parties to the Rome Statute; its own decision not to do so should also be respected.

25. *Draft resolution A/C.6/58/L.14 was adopted.*

26. **Mr. Rosand** (United States of America) reiterated that his delegation disassociated itself from the adoption of the draft resolution.

Agenda item 155: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/C.6/58/L.17)

27. **Mr. Kuzmenkov** (Russian Federation) introduced the draft resolution on implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/C.6/58/L.17) and announced that Chile, Egypt, The former Yugoslav Republic of Macedonia, Sierra Leone and Uganda had become sponsors.

Agenda item 157: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/58/52, A/58/187, A/58/302 and A/C.6/58/L.16)

28. **Mr. Wenaweser** (Liechtenstein), Chairman of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel and of the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel, introduced the reports of those bodies (A/58/52 and A/C.6/58/L.16).

29. The Ad Hoc Committee had held its second session in March 2003 pursuant to General Assembly resolution 57/28 and had continued the discussion of measures to enhance the existing protective legal regime for United Nations and associated personnel. It had considered a draft protocol to the Convention, proposed by New Zealand, which would provide for the automatic application of the Convention to all United Nations operations or presences; amendments thereto, proposed by the European Union; and a proposal by Pakistan on the declaration of exceptional risk. Discussion had focused on the definition of "United Nations operations" and the definition of "risk".

30. There had been no general agreement on the need to extend the existing protective legal regime to all United Nations operations and presences, regardless of the element of risk involved in their activities. Divergent views had also been expressed on whether to implement practical measures or to amend the Convention in order to eliminate the requirement of the declaration of exceptional risk. The Ad Hoc Committee had recommended, inter alia, that its mandate should be renewed for 2004.

31. The Working Group had made progress and, more importantly, had worked in a spirit of openness and dialogue. It had held two formal meetings and several informal consultations on 13, 14 and 17 March 2003. As mandated by the Sixth Committee, it had continued the work of the Ad Hoc Committee and had considered the question of expanding the scope of the existing legal protection regime for United Nations and associated personnel. Its work had been based on some of the proposals submitted to the Ad Hoc Committee at the latter's second session, a proposal by Jordan submitted to the Working Group at its current session, and the relevant reports of the Secretary-General; it had also had before it a proposal submitted by Costa Rica for consideration at a later stage.

32. Delegations had agreed in principle on the need to expand the scope of legal protection under the Convention and had considered it useful to give a more precise definition of the United Nations operations to which an expanded legal regime would apply, reflecting the notion of risk in order to dispense with the requirement of the declaration of exceptional risk; the Jordanian proposal had been welcomed as a valuable contribution in that regard. It had also been agreed that any new legal regime should not disturb the

existing regime under the 1994 Convention. There had been strong support for drafting a protocol, despite reservations as to its nature and eventual relationship to the Convention. The recommendation adopted by the Working Group took into account the views of all delegations and would allow for the continuation of their constructive work.

33. **Mr. Makayat-Safouesse** (Republic of the Congo) said that his Government was preparing to accede to the Convention and to the Rome Statute of the International Criminal Court; in the light of the large number of peacekeeping and humanitarian operations on the African continent, it attached great importance to the adequate protection of United Nations and associated personnel. He condemned the heinous attack on the United Nations office in Baghdad and was deeply concerned at the increasing number of such attacks, which were associated with the rise in indiscriminate acts of terrorism. States must rise above their differences and develop an effective system of protection so that United Nations and associated personnel could carry out their functions in safety.

34. His delegation therefore supported the effort to strengthen the Convention and the work of the Ad Hoc Committee and the Working Group. He particularly welcomed the spirit of cooperation and dialogue which had characterized the meetings of the Working Group, the valuable proposals made by the delegations of Jordan and New Zealand and the relevant report of the Secretary-General (A/58/187).

35. He agreed with the Secretary-General's comments on the factors which might weaken the Convention, especially the mechanism for invoking its protection regime. His delegation was considering with interest the idea of an additional protocol which would fill the gaps in the Convention regime and ensure its desired effectiveness and hoped that the recommended measures would be implemented as soon as possible. In particular, he welcomed the proposal to incorporate into status-of-forces and status-of-mission agreements key provisions of the Convention, such as the obligation to prevent attacks against members of United Nations operations and to establish such attacks as crimes punishable by law.

36. **Mr. Lauber** (Switzerland) said that his Government condemned the attack on the United Nations office in Baghdad and extended its sympathy to the victims' families. Switzerland contributed personnel to United Nations operations and attached great importance to guaranteeing the safety of those involved. The Convention alone could not do so; its gaps must be filled and its scope of application extended.

37. He welcomed the constructive spirit displayed in the Working Group and the emerging consensus on the need to expand the scope of the Convention, dispense with the need for a declaration of exceptional risk and develop a new instrument in the form on an optional protocol; he hoped that a consensus text would soon be prepared on the basis of the proposal submitted by New Zealand. As the depositary State for the Geneva Conventions, Switzerland also attached great importance to the question of delineating the scope of application of the Convention and of international humanitarian law.

38. **Mr. Bliss** (Australia) said that he welcomed the adoption of short-term measures to improve the scope of legal protection of United Nations and associated personnel; as a result of the Committee's work, key provisions of the Convention had been included in status-of-forces, status-of-mission and host country agreements. However, it was also necessary to combat impunity for attacks against United Nations and associated personnel, as had been done for terrorism and crimes against humanity.

39. The Working Group had given the Committee a clear mandate to extend the scope of protection of the Convention, including by means of a legal instrument. Most delegations had acknowledged the existing shortcomings and, although differences remained, there was broad agreement that an expanded scope should not necessarily extend to all United Nations and associated personnel. His delegation would prefer to incorporate the element of risk through a reference to particular types of mission rather than to specific situations; the goal was to set a clear, objective threshold of applicability of an expanded scope of legal protection.

40. There appeared to be general agreement that the existing legal regime should not be weakened; his delegation therefore supported the drafting of an optional protocol as the focus of the Committee's future work. It would also welcome a new proposal which would synthesize the Working Group's discussions and the proposals already submitted.

41. While universal adherence to the Convention should be the ultimate objective, universality should be understood broadly as including both the accession of many more States and an expansion of the existing regime. He therefore encouraged States to become parties to the Convention if they had not yet done so.

42. **Ms. Geddis** (New Zealand) said that New Zealand condemned the violent and too often fatal attacks on United Nations and associated personnel in the field, which constituted an attack on the effectiveness and purposes of the Organization itself. The problem of impunity was of great concern; in only 22 of the 198 deaths of civilian personnel caused by malicious acts since 1 January 1992 had the Member State concerned advised the Secretariat that it had taken legal action. She therefore welcomed the adoption of Security Council resolution 1502 (2003); however, legal measures also had a role to play in the protection of personnel.

43. She welcomed the recent increase in the number of States, including host States, which had or planned to become parties to the Convention. She also encouraged the Secretary-General to continue his efforts to ensure that the key provisions of the Convention, which New Zealand and Ukraine had had a lead role in developing, were incorporated into status-of-forces, status-of-mission and host country agreements.

44. However, events of recent years had demonstrated that the coverage and application of the Convention remained fragmented and responded inadequately to the growing number of non-peacekeeping missions. The "declaration of risk" mechanism was a major limitation and the definition of "United Nations operation" did not reflect the range of those operations. The Convention should apply automatically to all United Nations field missions; her delegation was therefore in favour of developing a protocol to the Convention which would achieve that goal, including through preparation of an optional protocol on the basis of the draft which New Zealand had submitted to the Ad Hoc Committee. Lastly, she welcomed the Working Group's recommendation that the Ad Hoc Committee should be reconvened with a mandate to expand the scope of legal protection under the Convention, including by means of a legal instrument.

45. **Ms. Kalema** (Uganda) said that, in view of the alarming increase in attacks on United Nations personnel all over the world, protection for such personnel must be guaranteed. The question, however, was how far the scope of the Convention should be broadened. Although progress had been made in the Working Group, additional proposals had been made which should be further considered during the drafting of a future legal instrument. There seemed to be growing agreement that the requirement of a declaration by the General Assembly or the Security Council that an exceptional risk existed should be lifted, but her delegation would like to see an element of that criterion retained. On the other hand, the proposed introduction of the word "presences" was unnecessary, since all the possible categories covered had already been adequately provided for under article 1 (a), (b) and (c) of the Convention. Indeed, the word "presences" could imply that protection should be extended to cover permanent United Nations headquarters and offices, and other organizations, which did not come under the Convention and were in any case covered by agreements entered into by the host country. Removing the requirement of a declaration or incorporating the word "presences" would impose an excessive obligation on the host country. A crime committed against United Nations personnel in times of peace would be punishable like any other crime.

46. Her delegation was open to the Australian proposal that the focus should be on categorizing the personnel to be covered rather than on situations. The proposal would, however, need to be seen in writing. As for the form that the instrument should take, her delegation would favour an optional protocol, which would maintain the integrity of the Convention while giving Member States an option as to whether to be bound by the Convention alone or by the Convention and the protocol together. Lastly, the Secretary-General should improve practical measures of protection on the ground: prevention was better than cure.

47. **Mr. Rosand** (United States of America) said that his delegation continued to support the Convention, which was currently before the United States Senate awaiting advice and consent, having been identified as a convention that the Senate should take up promptly. United Nations and associated personnel faced considerable risks in a variety of contexts around the world. The United States authorities were cooperating

with local authorities in Iraq to ensure that the terrorists who committed the appalling attack on United Nations personnel in Baghdad on 19 August 2003 should be located and held accountable.

48. With regard to the question of extending the application of the Convention, his delegation continued to be generally supportive. It continued to believe that a stand-alone protocol would be the most appropriate vehicle and that not all elements of the Convention would need to be included in a protocol of expanded scope.

49. **Mr. Khayaban** (Canada) said that the bombing of the United Nations headquarters in Baghdad was a further tragic reminder that working under a United Nations flag no longer ensured protection. United Nations and associated personnel were dedicated professionals who assumed great risk in order to meet urgent humanitarian needs and promote long-term stability and security in countries in or emerging from crisis. As staff continued to find themselves ever more a deliberate target of attack, including by terrorist groups, a greater commitment was required on the part of the international community to ensure their safety and security and bring the perpetrators of any such attacks to justice.

50. His delegation welcomed the unanimous adoption of Security Council resolution 1502 (2003) outlining steps to ensure the safety and security of humanitarian and United Nations and associated personnel. While complementing earlier such efforts by the Council, the resolution constituted a departure in one important respect: it noted the Council's intent to act and declare an exceptional risk to United Nations and associated personnel when presented by the Secretary-General with information to that effect.

51. States hosting such personnel, including humanitarian personnel, bore the primary responsibility for their safety and security and for prosecuting the perpetrators of attacks against them. In that context, it was regrettable that most States that had ratified the Convention on the Safety of United Nations and Associated Personnel were States which were less likely to host United Nations missions, and not States which benefited from the presence of peacekeepers and other United Nations staff. His delegation called upon those States that had not already done so to ratify the Convention as a matter of priority. It also continued to support the recommendation to the Secretary-General to request States to report on measures taken to become a party to and implement the Convention.

52. His delegation urged States hosting United Nations peacekeeping operations to place a priority on the conclusion of status-of-forces, status-of-mission agreements and host country agreements which included provisions for the safety of such personnel and urged the Secretariat to make further progress in the conclusion of such agreements.

53. His delegation welcomed the establishment of the International Criminal Court and the resulting system wherein national and international jurisdictions would work together to ensure that intentional attacks on peacekeepers and other humanitarian personnel did not go unpunished. His delegation had worked to ensure that such attacks were made a war crime in the Rome Statute establishing the Court.

54. His delegation joined New Zealand in endorsing the Secretary-General's recommendation that a protocol to the Convention be developed that would provide an automatic trigger mechanism and include a wider range of United Nations operations than were currently covered automatically. It also welcomed the recommendation contained in the report of the Working Group (A/C.6/58/L.16) that the mandate of the Ad Hoc Committee be extended to expand the scope of legal protection under the Convention, including by means of a legal instrument. His delegation looked forward to further discussions that would define the term "United Nations operations" in a clear and objective manner, ensuring that there was no gap in the legal protection provided for United Nations and associated personnel.

55. **Ms. Ahn** (Republic of Korea) said that her delegation supported the reconvening of the Ad Hoc Committee early in 2004 with a mandate to expand the scope of legal protection under the Convention, including by means of a legal instrument. In addition to the three proposals submitted respectively by New Zealand, by Pakistan and by Greece on behalf of the European Union, the Working Group had received new proposals from Jordan and Costa Rica. Those initiatives would facilitate more focused and productive discussions.

56. There was broad support in the Committee for eliminating the declaration of risk requirement since it was hard to initiate and therefore not very effective in practice. Regarding the expansion of the scope of application, her delegation noted with appreciation the

suggestion that a new protocol should designate the types of operations that posed risks by nature, rather than situations which were sometimes difficult to define. However, the new protocol would need to prepare for the contingency of United Nations operations not normally associated with risks that found themselves in rapidly deteriorating situations, thereby meriting the protection of the Convention.

57. **Mr. Hmoud** (Jordan) said that the issue under consideration was complex. It was necessary to recall the reasons behind the compromise reached in the negotiation of the 1994 Convention. Delegations, concerned at the increasing rate of attacks on peacekeepers and those involved in humanitarian and other United Nations operations in risky situations, had decided to establish a special legal regime of protection that took the form of a law enforcement instrument. It was noteworthy that a trigger mechanism had been incorporated into the Convention for its application to operations other than peacekeeping. In that regard his delegation took note of the Secretary-General's reports on the matter (A/55/637 and A/58/187). It also took note of paragraph 5 of Security Council resolution 1502 (2003), in which the Council expressed its determination to issue the declaration of exceptional risk where appropriate and invited the Secretary-General to advise the Council where circumstances would support such a declaration. It was to be hoped that the Council would act on the matter.

58. The number of States parties to the 1994 Convention was limited. In order for the Convention to achieve universality, the number, which currently stood at 68, must increase significantly. The Committee should carefully study the reasons behind the hesitation of many States to become parties to the Convention. Most of those States were committed to taking all appropriate measures to prevent attacks on peacekeepers and relevant personnel and to investigate and prosecute such attacks under their national legal systems. However, the fulfilment of other obligations under the Convention, especially those relating to personnel other than peacekeepers, was a major concern for those States.

59. In order to overcome the obstacles in the way of achieving universality of the Convention and enhancing the scope of legal protection under that instrument, tangible steps must be taken to deal with the existing system of legal protection. Solutions must also be found to the problems impeding the application of the Convention. To dispose of the requirement of a declaration of exceptional risk was one obvious solution, yet the key question was how to approach the issue. During the discussions in the Working Group, the general conviction had emerged that the scope of the Convention, if and when it was to be expanded, should cover only risky United Nations operations.

60. In that connection, his delegation had decided to submit a proposal containing elements to be included in any future instrument to expand the scope of protection under the Convention. The approach taken was to extend the protective regime under the Convention to those United Nations operations which needed it and to exclude those which did not. If the operation was conducted in a situation of armed conflict, it was by nature risky, and the protective regime of the Convention should apply. If the host State did not provide sufficient physical and legal protection to United Nations and associated personnel, the regime should also apply. Lastly, if the operation was not conducted in a host State, the regime should then provide the necessary legal protection.

61. The Jordanian proposal also tackled the concern of host and transit States in relation to violations of their national laws by personnel participating in United Nations operations. Considering that expanding the scope of the Convention beyond peacekeeping operations would mean that the new instrument would cover a large group of personnel, the proposal aimed to preserve the sovereign right of those States to exercise jurisdiction over violations of national law by such personnel. Such a right was, of course, preserved as long as the relevant State was not under another international obligation to the contrary.

62. **Mr. Barriga** (Liechtenstein) said that the international community had been reminded many times during the current year, and with particular horror on 19 August, of the vulnerability of United Nations staff worldwide. Everything possible must be done to improve all forms of protection for United Nations and associated personnel, who were united in their commitment to the goals, purposes and principles of the Organization.

63. Legal protection was not the only means of increasing the overall security of United Nations personnel, but it was an indispensable one. His delegation hoped that the momentum achieved by the

Working Group would be carried over to the work of the Ad Hoc Committee and lead to concrete results.

64. The current regime under the Convention on the Safety of United Nations and Associated Personnel should be improved in two areas. First, the scope needed to be expanded in order to cover a large number of United Nations presences. That should be achieved through a definition of United Nations personnel which was broader than the one in article 1 of the Convention and which eliminated the requirement of a declaration of exceptional risk.

65. Second, the legal consequences of that definition, namely, the obligations placed on host States, should be reviewed in order to achieve a reasonable balance between the valid interests of the host State in not being overburdened with preventive safety requirements and the equally valid interests of United Nations personnel in receiving adequate protection.

66. The reasons for the proposed changes were twofold. First, a convention which protected mainly United Nations staff members deployed for the purpose of maintaining or restoring international peace and security, who in many cases were equipped to defend themselves, was too limited in scope. In fact, in many cases such persons needed the convention's protection less than members of other United Nations presences which pursued other goals and which for that reason only were not protected by the convention. Second, a convention which placed on host States unnecessary burdens with questionable impact on the safety of United Nations personnel would remain limited in its ratifications and application.

67. The current Convention addressed two sets of obligations for host States: measures of protection to be taken before a potential attack and measures of mainly a judicial nature to be taken after an attack. A future regime should take into account the different nature of those two sets of measures. Only with respect to the first set of measures should there be a connection with the actual risk of an attack. It made sense to ask a State to take "appropriate" preventive measures, depending on the actual risk faced by the United Nations operation in question.

68. However, with respect to the second set of measures, no such differentiation should be made. Once a United Nations presence in the field had been attacked, the host State should exercise its jurisdiction, investigate, and cooperate with the international community to bring the perpetrators to justice. It did not make sense to say that personnel engaged in low-risk operations should not be afforded such redress, arguing that they had faced a low risk. If such an attack occurred, then obviously the assessment of a low risk was erroneous. In such a scenario, the victims and their families should not be made to suffer a second time from the legal consequences of human error. Instead, all available measures should be taken to investigate the crime and deter future attacks.

69. **Mr. Løvald** (Norway) said that the disturbing trend of blatant disrespect for humanitarian workers noted by the Secretary-General in his report to the Economic and Social Council and in two reports submitted to the General Assembly (A/58/187 and A/58/344) had been exacerbated by the unprecedented magnitude and anti-United Nations hostility of the Baghdad massacre in August. The deliberate targeting of United Nations and humanitarian personnel for violence was alarming, and called for a concerted effort to reverse that trend, which ran counter to the most basic tenets of international humanitarian law. The reinforcement of the United Nations security management system, the Inter-Agency Security Management Network and its increasing cooperation with the Red Cross/Red Crescent movement and non-governmental organizations must continue. A climate of impunity was quite simply unacceptable.

70. In that regard, his delegation welcomed the establishment of the International Criminal Court, which represented a decisive step towards ending impunity for the most serious crimes of international concern. It urged all States that were not yet parties to the Rome Statute to consider ratifying or acceding to it without delay and to adopt implementing legislation.

71. His delegation was in favour of expanding of the scope of the Convention. The short- and long-term measures recommended by the Secretary-General in document A/55/637 were important measures aimed at improving and enhancing the existing protective regime. His delegation noted with satisfaction that the General Assembly had been able to agree on several short-term measures, particularly the recommendation to incorporate the Convention's key provisions into status-of-forces, status-of-mission and host country agreements. The primary responsibility for the security and protection of United Nations and associated personnel and humanitarian personnel lay with the Government hosting the United Nations operation

conducted under the Charter of the United Nations or under its agreements with the relevant organization.

72. The short-term measures recommended in General Assembly resolution 57/28 merely strengthened the protective regime under the Convention within its existing framework. He expressed appreciation to New Zealand for its proposal for a protocol to the Convention, which would extend the applicability of the Convention to all United Nations operations, along the lines of the Secretary-General's recommendations in document A/55/637.

73. His delegation expressed satisfaction at the progress made during recent meetings of the Working Group and hoped that the Ad Hoc Committee could meet in 2004 with a mandate to expand the scope of legal protection under the Convention by means of a legal instrument. His delegation would actively support the elaboration of an optional protocol, in particular, with a view to dispensing with a declaration of exceptional risk, which had proved to be an obstacle to the application of the Convention.

74. **Ms. Čačić** (Croatia) said that her country, as a contributor to six peacekeeping operations and a former host country, fully understood the dangers and security risks faced by personnel involved in such operations and the importance of an adequate legal framework for their protection. Her delegation welcomed the establishment of the Ad Hoc Committee. Although the Committee had begun its work less than two years earlier, some tangible results were already visible. General Assembly resolution 57/28 endorsed a number of practical steps to strengthen the protective regime. Her delegation noted with satisfaction that the Convention's core provisions were already being incorporated into status-of-forces or comparable agreements currently under negotiation.

75. Her delegation also welcomed the adoption of Security Council resolution 1502 (2003) reinforcing some of those practical measures and spelling out the duty of Member States to ensure that crimes against humanitarian personnel did not go unpunished.

76. Her delegation remained convinced of the need to address the substantive limitations of the existing legal regime under the 1994 Convention. In view of the changing nature of United Nations engagement in the field, which was not necessarily limited to peacekeeping, her delegation had become aware of the inadequately narrow preconditions for triggering the application of the criminal law regime under the Convention. That was shown by the long list of civilians who had lost their lives over the past decade while performing services for the United Nations, annexed to document A/58/187, and the fact that in only 22 of those cases had a legal action followed.

77. Her delegation believed that it was necessary to expand the scope of the Convention to all United Nations operations and categories of personnel, regardless of the security situation prevailing at the time and place of the attack. It supported the Secretary-General's recommendation that serious consideration be given to dispensing with the need for such a declaration. Accordingly she welcomed the New Zealand proposal for the elaboration of an additional protocol, based on the principle of automatic application of the Convention to all operations.

78. **Mr. Guterres** (Timor-Leste) expressed concern that the number of perpetrators of malicious acts brought to justice around the world remained low in comparison to the number of civilian personnel killed in the performance of their duties.

79. The strength of the Convention lay in its universality and the commitment of States to implement its provisions. Timor-Leste hoped to ratify the Convention shortly. In that context, he welcomed the progress made in discussing expansion of the scope of the regime and hoped that the current momentum would be maintained. It was most important to strengthen the protection regime. He stressed that locally recruited personnel were particularly vulnerable to attacks, as had been demonstrated in Timor-Leste in 1999. His delegation therefore supported the New Zealand proposal (A/58/52, annex 1), which, by removing the risk trigger mechanism, would go a long way towards enhancing the protection of United Nations and associated personnel.

80. **Ms. Amadi** (Kenya) said that the heinous attack on United Nations headquarters in Baghdad was a reminder of the daily risks faced by United Nations and associated personnel in many parts of the world. Her Government was a key contributor to United Nations peacekeeping operations and also hosted a number of United Nations programmes and agencies. It therefore supported initiatives to enhance protection for United Nations and associated personnel. In that connection, it was gratifying that the proposals to that end were geared towards building a consensus. Her delegation

supported the recommendation that the Ad Hoc Committee's mandate should be renewed for 2004.

81. With only 68 States parties, the Convention had yet to become universal in character. Consideration should therefore be given not only to enhancing protection under the Convention but also to removing the obstacles that kept States from joining it. Kenya itself was at an advanced stage of the ratification process.

82. **Mr. Bocalandro** (Argentina) said that safety concerns should be incorporated in every aspect — operative, financial, legal and other — of United Nations activities. To that end, a uniform, consensual and universally agreed approach should be adopted. Only thus could a protection regime for United Nations personnel be successful. A lack of consensus would mean that the legal rules would not be observed.

83. Better operative protection was required, and better legal protection would ensure that the ultimate aim of punishment — retribution — could be met and would have a deterrent effect. It was a matter of concern that so few crimes were brought before the courts under the Convention as it stood, with the result that the level of impunity was unacceptably high. The legal regime should protect all personnel and be universally acceptable.

84. As for the form that the expanded scope of the Convention should take, his delegation would be in favour of an optional protocol, in order to maintain the integrity of the Convention. A number of excellent contributions had been made, notably by the representatives of New Zealand, Pakistan, Jordan, the European Union and Costa Rica, which would provide a basis for the proposals that would further advance the process of enlarging the scope of the Convention.

85. **Mr. Kobayashi** (Japan) said that he welcomed the significant progress made in clarifying the possible expansion of the scope of legal protection under the Convention. In that regard, he also welcomed the suggestion by the representative of New Zealand on the extent to which the scope of protection could be expanded. The proposal by Jordan regarding the inclusion of peacekeeping operations in the list of situations where the Convention would be applicable had also greatly contributed to the Working Group's deliberations. A good basis for further discussion had been established and further exploration was essential. His delegation therefore supported the renewal of the mandate of the Ad Hoc Committee: the current momentum should not be lost.

86. **Mr. Nesi** (Italy), speaking on behalf of the European Union, the acceding countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia and the associated countries Bulgaria and Romania, expressed strong condemnation of the attack on the United Nations headquarters in Baghdad and requested that strong measures should be taken to arrest and punish those responsible. The attack had not only caused the loss of human lives but also seriously jeopardized the efforts of the United Nations to help the Iraqi people rebuild their country.

87. He reiterated the European Union's support for the short- and long-term measures recommended in the Secretary-General's report in 2000 (A/55/637) to improve the protective regime of the Convention. Many delegations had shown an interest in the matter within the Ad Hoc Committee, where it had been agreed that every effort should be made to strengthen the safety and security of United Nations and associated personnel. As the Secretary-General said in his report (A/58/187), however, the strength of the Convention's protective regime lay in the widest possible accession and in readiness to implement its provisions. In order to punish those responsible for acts of violence against United Nations and associated personnel, universal participation should be strongly encouraged. Indeed, such attacks were a war crime, according to the Rome Statute of the International Criminal Court.

88. The European Union had underlined several times at the meeting of the Working Group that it attached great importance to strengthening the safety of personnel engaged in United Nations peacekeeping and humanitarian operations, particularly since the Union and its member States were among the largest contributors to such operations. He reiterated that the European Union considered the requirement of an exceptional-risk declaration to be a major limitation on the Convention and supported its elimination, in the belief that the Convention should apply automatically, without distinction, to any operation conducted under United Nations authority or control. It therefore supported the New Zealand proposal concerning a protocol to the Convention, as amended by the European Union with the aim of clarifying the scope of article 1 of the proposal. The New Zealand proposal

enhanced considerably the protection of United Nations and associated personnel in the field. The European Union also endorsed the recommendation that the Ad Hoc Committee should be reconvened with a mandate to expand the scope of legal protection under the Convention through a legal instrument.

89. **Mr. Katra** (Lebanon) said that, with his country's 25 years' experience of the United Nations Interim Force in Lebanon (UNIFIL), his delegation took a particular interest in all measures of protection for United Nations and associated personnel, both in southern Lebanon and elsewhere. UNIFIL had managed to fulfil its responsibilities in protecting the civilian population in southern Lebanon, in cooperation with the Lebanese Government, which was extremely grateful to the Organization and contributing countries, for their help in bringing peace to the region. The safety of personnel in such forces must be paramount. Lebanon had therefore signed the Convention two weeks earlier. His delegation endorsed the recommendations of the Working Group, which deserved full support for its work.

The meeting rose at 12.40 p.m.